

**AGREEMENT BETWEEN OWNER AND ADS LLC  
FOR PROFESSIONAL OR TECHNICAL SERVICES**

THIS AGREEMENT ("Agreement") made and entered into by and between City of West Lafayette Wastewater Utility ("Owner"), with an office located at 500 South River Road, West Lafayette, Indiana 47906-3613 and ADS LLC, a Delaware Limited Liability Company, with its headquarters at 4940 Research Drive, Huntsville, Alabama 35805 ("ADS"). Collectively, ADS and Owner are referred to as the "Parties" or individually as a "Party." The Agreement shall be effective January 1, 2011 upon authorized signatures of both Parties to this Agreement ("Effective Date"), and shall remain in effect through December 31, 2013, unless terminated as provided herein.

WHEREAS, the Owner desires to retain ADS to render certain professional or technical services, or to provide certain specialized monitoring equipment, or both; and

WHEREAS, ADS represents it has available and offers to provide personnel and facilities necessary to accomplish such services which the Owner has employed ADS to perform under this Agreement and that there are no conflicts of interest prohibited by law entering into this Agreement with the Owner;

**NOW THEREFORE, the Parties, agreeing to be legally bound, hereby agree as follows:**

**ARTICLE 1 - SERVICES OF ADS**

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**1.01 Scope**

A. ADS shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ADS is authorized to begin Basic Services as set forth in Exhibit A.

**ARTICLE 2 - OWNER'S RESPONSIBILITIES**

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**2.01 General**

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

**ARTICLE 3 - TIMES FOR RENDERING SERVICES**

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**3.01 General**

A. ADS's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ADS, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If Owner has requested changes in the scope, extent, or character of the Work, the time of performance of ADS's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of twenty-four (24) hours. The term "business day" shall mean Monday through Friday, 8:00 A.M. until 5:00 P.M., excluding Federal Holidays.

**3.02 Suspension**

A. If Owner fails to give prompt written authorization to proceed or if ADS' services are delayed through no fault of ADS, ADS may, after giving five (5) business days written notice to Owner, suspend services under this Agreement.

B. If ADS's services are delayed or suspended in whole or in part by Owner's actions or inactions for more than sixty (60) days through no fault of ADS, ADS shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ADS in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

**3.03 Force Majeure**

A. Neither Owner nor ADS shall hold the other responsible for damages or delays in performance caused by Force Majeure or other events beyond the control of the other Party which could not reasonably have been anticipated or prevented. Force Majeure shall include, but not be limited to, unusually severe weather, floods, power outages, epidemics, war, acts of terrorism, riots, strikes, lockouts, exercise of police power, condemnation or eminent domain. The foregoing shall not give rise to any claims or damages

or be considered a waiver by either Party of the obligations of this Agreement.

#### **ARTICLE 4 - PAYMENTS TO ADS**

##### ***4.01 Methods of Payment for Services and Reimbursable Expenses of ADS***

A. *For Basic Services.* Owner shall pay ADS for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* Owner shall pay ADS for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, Owner shall pay ADS for Reimbursable Expenses incurred by ADS and ADS's Subcontractors as set forth in Exhibit C.

##### ***4.02 Other Provisions Concerning Payments***

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ADS's standard invoicing practices and will be submitted to Owner by ADS, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within thirty (30) days after the date they are issued by ADS. If Owner fails to make any payment due ADS for services and or reimbursable expenses within thirty (30) days after issuance of ADS's invoice, the amounts due ADS will be increased at the rate of one and one-half percent (1.5%) per month (or the maximum rate of interest permitted by law) from said thirtieth day. In addition, ADS may, after giving five (5) business days written notice to Owner, suspend services under this Agreement until ADS has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* If Owner objects to ADS's invoice, Owner shall so advise ADS in writing giving specific reasons within ten (10) business days of receipt of such invoice. In the event of such dispute, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. If no such objection is made within the ten (10)- business day period, the invoice will be considered acceptable by Owner.

D. *Payments Upon Termination.*

1. In the event of termination by ADS for cause or by Owner for convenience, ADS will be entitled to invoice Owner and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by a Party for convenience or by ADS for cause, ADS, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice Owner and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as office relocations and reassignment of personnel, costs of terminating contracts with ADS's Subcontractors, and other related close-out costs, using reasonable methods and rates including those for Additional Services as set forth in Exhibit C.

E. [deleted].

F. *Records of ADS's Costs, Compensation and Payment.* ADS's fiscal records relating to ADS's compensation and payments under this agreement shall be kept in accordance with ADS's Company policy and in compliance with applicable State and Federal law. All other records relating to this Agreement shall be kept for a period not to exceed two (2) years from the date the record was generated, unless this period is extended in writing by ADS.

G. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose any taxes, fees, or costs on ADS's services or other costs in connection with Work hereunder or compensation, such new taxes, fees, or costs shall be invoiced to and paid by Owner as a Reimbursable Expense. Should such taxes, fees, or costs be imposed, they shall be in addition to ADS's estimated total compensation.

#### **ARTICLE 5 - GENERAL CONSIDERATIONS**

##### ***5.01 Standards of Performance***

A. The standard of care for all services performed or furnished by ADS under this Agreement will be the care and skill ordinarily used by members of ADS's profession practicing under similar circumstances at the same time and in the same locality. ADS makes no warranties, express or implied, under this Agreement or

otherwise, in connection with ADS's services, except as provided in section 5.01.B.

B. All new products manufactured by ADS will be free from defects in material and workmanship for up to one (1) year following the date of shipment from ADS. During this warranty period, upon satisfactory proof of a defect, the product may be returned for repair or replacement, at ADS's sole option. No returns will be accepted unless the Owner has prepaid shipping and has received a prior authorization return number from ADS. Please contact ADS to obtain an authorization return number. Warranty repairs and replacements will be performed only by ADS or its authorized representative. Any unauthorized repair or replacement, including without limitation opening up a monitor, will void this product warranty. Any repair or replacement will be covered by this new product warranty for ninety (90) days from the date that such repaired or replaced product is shipped from ADS. This warranty is available to the Owner as the original purchaser of the product and only if it has been installed, operated, and maintained by ADS. This warranty does not apply to damage by catastrophes of nature, fire, explosion, acts of God (including, but not limited to, lightning damage and power surges), accidents, improper use or service, damage during transportation, or other similar causes beyond ADS's control.

C. ADS shall perform or furnish services in all areas of Work to which this Agreement applies. ADS shall serve as Owner's prime contractor for the Work. ADS may employ such Subcontractors as ADS deems necessary to assist in the performance or furnishing of the services. ADS shall not be required to employ any Subcontractors unacceptable to ADS.

D. ADS and Owner shall comply with applicable Laws or Regulations and reasonable Owner-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements, including the change in interpretation of these requirements, after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to ADS's scope of services, times of performance, or compensation.

E. Owner shall be responsible for, and ADS may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to ADS pursuant to this Agreement. ADS may use such requirements,

reports, data, and information in performing or furnishing services under this Agreement.

F. Owner shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ADS.

#### **5.02 Authorized Representatives**

A. Contemporaneous with the execution of this Agreement, ADS and Owner shall designate specific individuals to act as ADS and Owner's representatives with respect to the services to be performed or furnished by ADS and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Work on behalf of each respective Party.

#### **5.03 Use of Documents**

A. All Documents are instruments of service in respect to Work under this Agreement, and ADS shall retain an ownership and property interest therein (including the right of reuse at the discretion of ADS) whether or not the Work is completed.

B. Copies of Documents that may be relied upon by Owner are limited to the printed copies (also known as hard copies) that are signed or sealed by ADS. Files in electronic media format of text, data, graphics, or of other types that are furnished by ADS to Owner are only for convenience of Owner. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within thirty (30) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the thirty (30)-day acceptance period will be corrected by the party delivering the electronic files. ADS shall not be responsible to maintain documents stored in electronic media format after acceptance by Owner.

D. When transferring documents in electronic media format, ADS makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer

hardware differing from those used by ADS at the beginning of this Project.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Such Documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Work or on any other Work. Any such reuse or modification without written verification or adaptation by ADS, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to ADS or to ADS's Subcontractors. Owner shall indemnify and hold harmless ADS and ADS's Subcontractors from all claims, damages, losses, and expenses, including attorneys' fees arising out of such use.

F. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

G. Any verification or adaptation of the Documents for extensions of the Work or for any other Work will entitle ADS to further compensation at rates to be agreed upon by Owner and ADS.

H. Each Party expressly agrees to include, maintain, reproduce, and perpetuate all notices or markings on all copies of tangible media comprising each Party's Proprietary or Confidential information in the manner in which such notices or markings appear on such tangible media or in the manner in which either Party may reasonably request.

#### **5.04 Changes**

A. Either Party reserves the right at any time and without nullifying this Agreement and without notice to the sureties, if any, to request a change in the Agreement in the form of additions, deletions, or revisions in the Work or the manner of its performance that include but are not limited to changes: in drawings, designs or specifications; in the sequence of ADS's Work; directing acceleration or deceleration in performance of the Work; or modifying the Agreement Schedule or the Agreement milestones. Requested changes shall be made in writing and shall be signed by the Party's Authorized Representative. If the requested changes are agreed upon by both Parties, upon receipt of any request, the Agreement shall be modified as requested in writing. Should the Parties disagree on any requested changes, the matter may be brought under the disputes clause as stated in section 5.11 hereunder.

B. Should compensation under this agreement provide for the payment of unit prices, the Parties recognize that unit pricing compensation arrangements assume the recovery of certain costs, including but not limited to mobilization and demobilization, over a potentially variable number of units, and Owner agrees that each percentage reduction in scope will result in a similar increase in unit price plus an additional ten percent (10%).

#### **5.05 Insurance**

A. During the term of this Agreement, ADS shall at all times procure and maintain insurance as set forth in Exhibit D, and upon request of Owner, shall furnish certificates evidencing insurance.

#### **5.06 Termination**

A. The obligation to provide further services under this Agreement may be terminated:

##### **1. For cause,**

a. By either Party upon thirty (30) days written notice in the event of substantial failure by the other Party to perform in accordance with the terms hereof through no fault of the terminating Party.

##### **b. By ADS:**

1) upon seven (7) days written notice if ADS believes that ADS is being requested by Owner to furnish or perform services contrary to ADS's responsibilities; or

2) upon seven (7) days written notice if ADS's services for the Project are delayed or suspended for more than sixty (60) days for reasons beyond ADS's control.

3) ADS shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the Party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof.

2. *For convenience,*

a. Termination may be accomplished by either Party by providing written notice to the other Party sixty (60) days prior to the desired date for termination.

B. Unless stated otherwise in this Agreement, the terminating Party under paragraphs 5.06.A.1 or 5.06.A.2 shall set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow ADS to demobilize personnel and equipment from the site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

**5.07 Controlling Law**

A. This Agreement shall be governed by the laws of the State of Indiana without regard to conflicts of laws, rules or principles. The Parties agree that venue is appropriate in the State of Indiana.

**5.08 Successors, Assigns, and Beneficiaries**

A. Owner and ADS each are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and ADS (and to the extent permitted by paragraph 5.08.B the assigns of Owner and ADS) are hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other Party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither Owner nor ADS may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Such consent will not be unreasonably withheld by either Party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or ADS to any Contractor, Contractor's subcontractor, supplier, other

individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and ADS and not for the benefit of any other Party.

**5.09 Delegation of Duties**

A. If in this Agreement it is stated that the Basic Services of ADS are to be performed by one or more specified individuals within ADS's organization, only the individuals so specified shall perform services hereunder and their duties shall not be delegated to any other individual or entity without the written consent of the Owner. ADS may employ such other independent professional associates and Subcontractors as ADS may deem appropriate to assist in the performance of services hereunder with the prior written consent of the Owner.

**5.10 Patent Infringement**

A. ADS will defend or, at its election, effect settlement of any suit or proceeding brought against the Owner in which it is claimed that the equipment or services performed by ADS infringes any United States patent and will pay to Owner all out-of-pocket costs incurred and all damages and costs awarded against Owner, provided that Owner, upon commencement of action promptly notified ADS in writing giving ADS complete and full authority, information and assistance to defend against the suit or proceeding.

**5.11 Dispute Resolution**

A. Owner and ADS agree to negotiate all disputes between them in good faith for a period of time not to exceed thirty (30) days from the date of notice prior to exercising their rights hereunder, or under law.

B. Owner and ADS will first attempt to resolve claims, disputes, disagreements, or controversies at the field level through discussions between Owner and ADS Authorized Representatives.

C. If a claim, dispute, disagreement, or controversy cannot be resolved through Owner's and ADS's Authorized Representatives, Owner and ADS, upon the request of either Party, shall each appoint a Senior Representative who shall meet as soon as conveniently possible, but in no case later than thirty

(30) days after such a request is made, to attempt to resolve such claim, dispute, disagreement, or controversy. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving their claim, dispute, disagreement, or controversy.

D. If after meeting, the Senior Representatives determine that the claim, dispute, disagreement, or controversy cannot be resolved on terms satisfactory to both Parties, the Parties agree to submit the matter to mediation in accordance with the American Arbitration Association's Commercial Mediation Rules.

E. If the dispute cannot be resolved under the procedures outlined above, the Parties agree that it shall be submitted for final decision by binding arbitration under the Commercial Arbitration rules of the American Arbitration Association. The arbitration panel shall be made up of three (3) arbitrators. Each Party shall choose an arbitrator and the third to be agreed upon by the selected arbitrators of both Parties.

F. Such mediation and arbitration, if any, shall be conducted in the City/State where the Work is performed, and shall be held in the English language. Any award rendered by the arbitrator(s) will be final, and judgment may be entered upon it in any court of competent jurisdiction.

G. In no event may a demand for arbitration be made after the date on which institution of legal or equitable proceedings based upon the dispute would be barred under the applicable statute of limitations. No arbitration arising out of or relating to this Agreement may be included by joinder, consolidation, or in any manner any person or entity who is not a Party to this Agreement.

#### **5.12 Hazardous Environmental Condition**

A. Owner represents to ADS that to the best of its knowledge a Hazardous Environmental Condition does not exist, and has disclosed to the best of its knowledge to ADS the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site(s), including type, quantity, and location.

B. It is acknowledged by both Parties that ADS's scope of services does not include any services related to a Hazardous Environmental Condition. In the event

ADS or any other Party encounters a Hazardous Environmental Condition, ADS may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Work affected thereby until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site(s) is/are in full compliance with applicable Laws and Regulations.

C. Owner acknowledges that ADS is performing services for Owner and that ADS is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site(s) in connection with ADS's activities under this Agreement.

D. If ADS's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ADS's terminating this Agreement for cause on thirty (30) days notice.

#### **5.13 Allocation of Risks**

##### **A. INDEMNIFICATION**

1. TO THE FULLEST EXTENT PERMITTED BY LAW, ADS SHALL INDEMNIFY AND HOLD HARMLESS OWNER, OWNER'S OFFICERS, DIRECTORS, PARTNERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL COSTS AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL REASONABLE EXPENSES AND REASONABLE ATTORNEYS FEES) CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF ADS OR ADS'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND ADS'S SUBCONTRACTORS IN THE PERFORMANCE AND FURNISHING OF ADS'S SERVICES UNDER THIS AGREEMENT.

2. TO THE FULLEST EXTENT PERMITTED BY LAW, OWNER SHALL INDEMNIFY AND HOLD HARMLESS ADS, ADS'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND ADS'S SUBCONTRACTORS FROM AND AGAINST ANY AND ALL COSTS, LOSSES, AND

DAMAGES (INCLUDING BUT NOT LIMITED TO ALL REASONABLE EXPENSES AND REASONABLE ATTORNEYS FEES) CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND OWNER'S CONSULTANTS WITH RESPECT TO THIS AGREEMENT OR THE WORK.

3. TO THE FULLEST EXTENT PERMITTED BY LAW ADS'S TOTAL LIABILITY TO OWNER AND ANYONE CLAIMING BY, THROUGH, OR UNDER OWNER FOR ANY COST, LOSS, OR DAMAGES CAUSED IN PART BY THE NEGLIGENCE OF ADS AND IN PART BY THE NEGLIGENCE OF OWNER OR ANY OTHER NEGLIGENT ENTITY OR INDIVIDUAL, SHALL NOT EXCEED THE PERCENTAGE SHARE THAT ADS'S NEGLIGENCE BEARS TO THE TOTAL NEGLIGENCE OF OWNER, ADS, AND ALL OTHER NEGLIGENT ENTITIES AND INDIVIDUALS. THIS SECTION SHALL NOT DIMINISH OWNER'S STATUTORY DEFENSES AS A PUBLIC ENTITY INCLUDING BY NOT LIMITED TO CONTRIBUTORY NEGLIGENCE.

4. IN ANY ACTION BETWEEN THE PARTIES, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER GROUNDED IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR CONTRACT, AND UNDER NO CIRCUMSTANCES WILL ITS LIABILITY EXCEED THE AGREEMENT PRICE FOR THE GOODS OR SERVICES UPON WHICH LIABILITY IS CLAIMED. ANY ACTION FOR BREACH OF CONTRACT MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

#### **5.14 Confidentiality and Non-disclosure**

A. Both Parties acknowledge that, in the course of performing this Agreement, certain employees, agents or representatives may be exposed to or acquire information which is proprietary or confidential. Such proprietary and confidential information may include without limitation information related to research, development,

designs, plans, reports, investigations, materials, data, pricing, trade secrets, customer lists, salaries, or business information ("Confidential and Proprietary Information").

B. Both Parties agree to hold each other's Proprietary and Confidential Information in strict confidence and not to make each other's Proprietary and Confidential Information available in any form to any third party or to use each other's Proprietary and Confidential Information for any other purpose than for the performance of work under the implementation of this Agreement.

#### **5.15 Employees**

A. Throughout the term of this Agreement, and for one (1) year following its termination, neither Party shall solicit or hire any current or former (within twelve months of termination) personnel of the other Party, without the express written consent of the other Party.

#### **5.16 EEO Statement**

A. It is the policy of ADS to recruit, hire, train, compensate, promote, discipline, and otherwise treat its employees and applicants without regard or consideration for the individual's race, color, religious creed, sex, age, national origin, ancestry, mental or physical disability, marital status, citizenship status or any other reason prohibited by law. In addition, ADS is committed to fully complying with all applicable laws and regulations regarding the Americans with Disabilities Act of 1990, Title VII of the Civil Rights Act, and the Vietnam Era Veterans Readjustment Assistance Act and applicable Federal, State, and Local regulations. ADS also provides equal employment opportunity in all employment practices to qualified applicants and employees without regard to disability.

#### **5.16 Notices**

A. Any notice required under this Agreement shall be in writing, addressed to the appropriate Party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

#### **5.17 Attorney's Fees**

A. In the event of any dispute and/or legal action arising from an interpretation and/or the performance of any of the provisions of this Agreement, the Parties hereby agree that the prevailing Party shall be awarded reasonable attorney's fees and costs,

including but not limited to, the cost of paralegals, accountants and attorney's fees and costs of appellate proceedings, if applicable.

#### **5.18 Survival**

A. All express representations, indemnifications, limitations of liability, and assurances of confidentiality included in this Agreement shall survive its completion or termination for any reason.

#### **5.19 Severability**

A. Any provision or part of this Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and ADS, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### **5.20 Waiver**

A. Non-enforcement of any provision by either Party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

#### **5.21 Headings**

A. The headings used in this Agreement are for general reference only and do not have special significance.

#### **5.22 Entire Agreement**

A. This Agreement constitutes the entire agreement between the Parties and exclusive statement of the terms between the Parties with respect to services to be performed hereunder. The Exhibits referenced in this Agreement and the specifications and drawings referenced therein are a part of this Agreement with the same force and effect as if fully set forth herein. No alteration, modification, or amendment of any of the provisions hereof shall be binding unless in writing and signed by duly Authorized Representatives of the Parties.



In Witness Whereof, the Parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

ADS:

By: \_\_\_\_\_

By: J. J. Hart

Title: \_\_\_\_\_

Title: Treasurer

Date Signed: \_\_\_\_\_

Date Signed: 12-10-10

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4940 Research Drive  
Huntsville, AL 35805  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative (paragraph 5.02.A):

Designated Representative (paragraph 5.02.A):

\_\_\_\_\_

Bob Grob

Title: \_\_\_\_\_

Title: BDM

Phone Number: \_\_\_\_\_

Phone Number: 859-512-8204

Facsimile Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

E-Mail Address: rgrob@idexcorp.com

## Exhibit A

### SCOPE OF WORK

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Article 1 of the Agreement is amended and supplemented to include the following agreement of the Parties. ADS shall provide Basic and Additional Services as set forth below.

#### Part 1 –Basic Services

##### 1. New Equipment and Installation

ADS will provide one (1) FlowShark flow monitor (with cellular telemetry) and one (1) tipping bucket rain gauge (with cellular telemetry) for installation at locations to be determined by the Owner. The work will be performed as set forth below:

- A. Kick-off Meeting. Installation will begin with a kick-off meeting between representatives of the Owner and ADS. The purpose of the kick-off meeting is to discuss project scope, establish lines of communication, set milestones, and set the project schedule.
- B. Site Location. ADS will meet with the Client to identify/verify the location of monitor installation.
- C. Site Investigation. Once the installation location is provided to ADS, ADS field crew(s) will perform site investigations. ADS will utilize a standard 2-person field crew for fieldwork and comply with federal standards for confined-space entry.
- D. Site Report. A site report will be generated upon completion of the site investigation. The site report will include a sketch of the general location and physical characteristics of the proposed monitoring location, including any safety concerns. Final equipment location to be approved by the Client.
- E. Equipment. ADS will provide one (1) ADS® FlowShark™ flow monitor (with cellular telemetry) and one (1) tipping bucket rain gauge (with cellular telemetry). The monitor installation will include an ultrasonic depth sensor, pressure depth sensor and velocity sensor. The sensors will be installed using a standard ring installation.

ADS will also upgrade the two (2) existing Model 3500 Flow Monitors to FlowShark series monitors (with landline telemetry) so as to keep commonality among the flow monitor hardware. These equipment upgrades will utilize the existing sensor sets already installed in the pipes.

- F. Monitor Activation. Once installed, the monitors will be activated and set to take readings at 5-minute intervals. ADS Field crews will take manual depth readings with a ruler in order to confirm the monitor is collecting accurate data based on the actual existing hydraulic conditions at the sensor location.

##### 2. Comprehensive Field Services.

As part of a Comprehensive Service Program, ADS will perform the following services on three (3) existing ADS flow monitors and one (1) ADS Rain Alert II Rain Gauge. These services are identical to what ADS has been providing in the past, and require no involvement from the City of West Lafayette. Eric Hehmann, Project Manager, will be designated as the immediate contact for problems associated with maintenance and confirmation work. These services include the following:

- A. Diagnostics: Remote diagnostic inspection of all equipment using the most current procedures and programs from its facilities in Indianapolis, IN. Our Regional Office in Indianapolis is staffed with our Project Manager, Field Managers, and Field Associates.

- B. Repair: Repair and preventative maintenance services necessary to keep the equipment operating in accordance with the manufacturer's design specifications. The types of services to be performed under this Agreement include but are not limited to the following:
- Communication link failure
  - Confirmation of all equipment on a quarterly basis
  - 90% Uptime for each monitoring site (Assumes working phone line. Not applicable for manual collection of data).
  - Depth sensor replacement (a depth sensor shall be considered for replacement if the sensor has less than five (5) good sensor pairs firing in both directions);
  - Battery replacement (battery voltages shall be considered as being low when the voltage is less than 8.0V);
  - Velocity sensor replacement (a velocity sensor shall be considered for replacement if the sensor readings are a constant value or zero, indicating a loss of sensitivity and/or does not respond to overflow events or confirmations).
- C. Service Schedule: The field service shall accommodate normal operating hours of 8:00 a.m. to 5:00 p.m. Monday through Friday (service during holidays or outside of normal business hours shall be at ADS's then current Time and Materials rate).
- D. Response Time: ADS will investigate perceived malfunction or monitor or communication equipment within two (2) business days of discovery of the malfunction. ADS will repair or replace any malfunctioning equipment within two (2) business days of initial field investigation.
- E. Telephone Telemetry: This proposal and pricing assumes that each monitor has either a wireless cellular connection or a working telephone line. ADS will provide troubleshooting and repair of the telephone line only from the flow monitor to the telephone interface box. ADS is not responsible for telephone repairs made necessary by acts of third parties or the Telephone Company. ADS is not responsible under the Service Agreement for the phone line beyond the local site interface box. Any telephone line repairs or manual collects outside this scope will be done on a time and materials basis.
- F. Exclusions: The types of services excluded under a Comprehensive Service Agreement are as follows:
- changes or alterations in specifications;
  - painting or refinishing or furnishing materials therefore except as damaged by ADS during service work;
  - installation, moving, or removing of equipment unless required as part of the repair process;
  - repairs made necessary by accident of the City, its employees, agents, contractors or invitees;
  - repairs made necessary due to attempts by the City to repair or maintain the equipment unless authorized by ADS;
  - maintenance and repair necessary to put equipment not under the comprehensive scheduled service contract in good repair;
  - equipment repair or replacement outside manufacturer's design specifications; and
  - repairs made necessary due to events beyond ADS's control (*force majeure*).

3. Data Processing, Analysis Services, and Reporting Services.

ADS will provide data processing and reporting services for three (3) ADS flow monitors and one (1) ADS Rain Alert II Rain Gauge including data collection, data auditing, and data editing. These are further described below:

- A. Data Collection: An ADS data analyst creates a location information file ("LIF") for each site and creates a site sheet. The analyst collects data from each monitoring location twice per week. If the monitor does not collect successfully, the analyst schedules a field service visit.
- B. Data Auditing: The data analyst reviews the collected data at each site twice per week, which includes the following:
- Analyzing of data patterns in both the Hydrograph and Scattergraph to assess if patterns are consistent with functioning equipment and valid hydraulics;
  - Comparison of meter data to field confirmations. ADS will maintain two (2) valid confirmations for each typical monitoring site;
  - The analyst will notify the Field Manager if the confirmation readings are invalid as indicated by his/her analysis;
  - The analyst will specifically look for indications of malfunctioning equipment, low battery voltage, and questionable changes in meter parameters; and
  - A list will be prepared of sites requiring further field service and given to the Field Manager. The Field Manager is responsible for the completion of the field service work indicated on the list.
- C. Data Editing: The Data Analyst will edit the data each month including the following:
- The Analyst will create the DFINAL entity by choosing which raw depth entity(s) to use for the time period of the edit;
  - The Analyst will interpolate sporadic pops and drops;
  - The Analyst will adjust surcharge depths to full pipe if necessary;
  - The Analyst will determine silt levels and enter or confirm them in the database;
  - The Analyst will also calculate and apply gains to velocity data, if necessary. The velocity data will be edited by flagging sporadic pops and drops or interpolating these points if valid;
  - The Analyst will select the final flow equations and calculate the QFINAL entity. The continuity equation will be used whenever reliable velocity data exists;
  - The Analyst will perform final inspection of the data, which includes review of the DFINAL, VFINAL, and QFINAL data entities on a hydrograph. A scattergraph is then reviewed comparing the final depth and velocity entities against field confirmation measurements; and
  - A final balance is performed on the data. The Analyst will check for negative net flows and troubleshoot the problem if necessary. The flow patterns will also be examined. If the upstream and downstream patterns are dissimilar, the Analyst will investigate to either correct errors or document the conditions that verify the unusual flow patterns.
- D. Data Review: A Senior Data Analyst or Project Engineer reviews all final data and reports before they are delivered. This includes a 19-point checklist, which includes the following: Pipe shape; Pipe dimensions; Physical offset; Average to Peak application; DFINAL composition; Velocity Data editing; Gain values; Scattergraph; Hydraulic Coefficient (if applicable); QFINAL selection; Silt; and Comparison to U/S and D/S locations.
- E. Reporting: ADS will provide monthly reporting for the three (3) ADS flow monitors and one (1) ADS Rain Alert II Rain Gauge in the Owner's Network. A monthly report, including a DMR

(Discharge Monitoring Report) will be delivered electronically via Intelli-Serve and shall include:

- A site commentary for each location, which includes a table listing the maximum, minimum and average depth, velocity and quantity. The commentary briefly discusses the data as compared to previous months and provides information on the method used to obtain final quantity data;
- A scattergraph of DFINAL and VFINAL for the month with confirmation points shown;
- A monthly hydrograph of DFINAL, VFINAL and QFINAL (and RAIN if rain gauges are present);
- Weekly hydrographs of DFINAL, VFINAL, and QFINAL;
- Monthly tabular data of DFINAL, VFINAL, and QFINAL;
- Weekly tabular data of DFINAL, VFINAL, and QFINAL; and
- Installation reports with the site location, photographs and other physical characteristics of the site.

F. Web-based Reporting. All reporting will be provided via Intelli-serve.

- Access: ADS will provide secure access to the Intelli-serve system for the Owner and others designated by the Owner. Each user will receive a unique login and password in order to access the web based system.
- Monthly Reports: ADS will provide the Owner with the ability to generate and examine predefined or user defined, interactive reports using the ADS Intelli-serve™ reporting system. Intelli-serve™ is a hosted system available via the internet using any internet explorer web browser. Each user of the system will have a unique login and password, customizable for different levels of data access, sharing and viewing. The system will include the ability to generate and view:
  - User defined weekly and monthly hydrographs of depth, velocity, flow, and rain for each site;
  - scattergraphs for each site;
  - monthly rainfall hyetographs;
  - tabular depth, velocity, and flow data in both monthly summary form and native interval form;
  - monthly site commentary;
  - detailed site reports with digital photographs, and;
  - Monthly service reports.
  - ADS will prepare a monthly DMR report for the CSO monitors. The report will be posted to the Intelli-serve web site by the 15<sup>th</sup> day of each month.
- Library of Final Data: ADS will store all edited final flow and rainfall data within the ADS Intelli-serve™ system, which will be available to Owner as needed. Monthly finalized data will be posted to the system by the 15<sup>th</sup> day of the month. All finalized data points (15 or 5 minute readings as applicable) will also be stored.

## Part 2 – Additional Services

None

## **Exhibit B**

### **OWNER'S RESPONSIBILITIES**

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Article 2 of the Agreement is amended and supplemented to include the following agreement of the Parties.

Owner agrees to perform the following functions in connection with this Agreement. Owner agrees that certain activities must be acknowledged prior to ADS having an obligation to perform services enumerated in Exhibit A herein.

- The Owner will be responsible for coordinating any necessary line repairs with the telephone company.
- Owner will designate a project manager to coordinate ADS's work and to act as the Owner's representative with respect to the work performed under this Agreement.
- Owner will provide access to and make all provisions for ADS to enter upon public and private lands as required for ADS to perform work under this Agreement.
- Owner will not make repairs or perform maintenance or attempt to do so on the equipment covered under this Agreement unless authorized by ADS. This shall include removal, relocation or installation of monitoring equipment.

## Exhibit C

### ADS'S COMPENSATION

Article 4 of the Agreement is amended and supplemented to include the following agreement of the Parties:

Item	Quantity	Unit Price	Total	Remarks
New ADS FlowShark flow monitor at Quincy CSO location	1	\$6,875.00	\$6,875.00	Flow Monitor equipped with cellular telemetry. Price includes \$1,000 trade-in discount
Installation of new ADS FlowShark flow monitor at Quincy CSO location	1	\$1,350.00	\$1,350.00	Installation by certified 2-man confined space entry crew
New ADS Rain Alert II Rain Gauge with 8-inch tipping bucket	1	\$3,121.00	\$3,121.00	Rain Gauge equipped with cellular telemetry
Installation of new ADS Rain Alert II Rain Gauge with 8-inch tipping bucket	1	\$350.00	\$350.00	Rain Gauge location to be specified by the City
Upgrade of two (2) existing ADS Model 3500 Flow Monitors to FlowShark Monitors	2	\$4,700.00	\$9,400.00	Price includes \$1,000 trade-in discount for each meter being upgraded.
Comprehensive Maintenance on three (3) ADS Flow Monitors and one (1) Rain Gauge (per meter per month)	108	\$355.00	\$38,340.00	Includes all comprehensive service as described in Exhibit A.
Data Processing on three (3) ADS Flow Monitors and One (1) Rain Gauge including monthly DMR (per meter per month)	108	\$330.00	\$35,640.00	Includes all data collects, data review and data processing as described in Exhibit A.
Cellular communication fees for one (1) new flow monitor and one (1) new rain gauge (per meter per month)	72	\$25.00	\$1,800.00	Other existing monitors use landline telephone telemetry
IntelliServe web hosted access to three (3) flow meters and one (1) rain gauge (per site per month)	144	\$50.00	\$7,200.00	Unlimited users and alarming capabilities
<b>Total 3- Year Program Cost</b>			<b>\$104,076.00</b>	

## Exhibit D

### INSURANCE

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Paragraph 5.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

#### **Section 1 - Workers Compensation Insurance**

ADS shall carry a standard Worker's Compensation and Employer's Liability Policy on all its employees subject to statutory limits of the applicable Worker's Compensation Act.

#### **Section 2 - Comprehensive Automobile Liability Insurance**

ADS agrees to carry a Comprehensive Automobile Liability Policy providing bodily injury liability, on an occurrence basis and property damage liability on an accident basis. The policy shall protect ADS against all liability arising out of the use of owned or leased automobiles, both passenger and commercial. Limits of liability for Comprehensive Automobile Liability Insurance shall be not less than One Million Dollars (\$1,000,000) Combined Single Limit.

#### **Section 3 - Comprehensive General Liability Insurance**

ADS agrees to carry a Comprehensive General Liability Policy providing bodily injury coverage on an occurrence basis, and property damage coverage on an accident basis, and including completed operations, independent contractors, and contractual liability coverage. Limits of liability for Comprehensive General Liability Insurance shall be: \$1,000,000 combined single limit bodily injury and property damage, \$1,000,000 products completed operations annual aggregate and \$1,000,000 general aggregate.